DEE BEE YOKE & ANOR v. NICK ABU DASUKI HJ ABU HASSAN & ANOR

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
LIM YEE LAN JCA
ROHANA YUSUF JCA
UMI KALTHUM ABDUL MAJID JCA
NALLINI PATHMANATHAN JCA
[CIVIL APPEAL (APPLICATION TO REVIEW) NO: B-04-249-09-2014]
10 OCTOBER 2016

CIVIL PROCEDURE: *Jurisdiction – Inherent jurisdiction and powers of court – Application to review and order rehearing of appeal before another panel – Whether court seized with power to review decision of another panel – Whether conditions for exercise of court's review jurisdiction met – Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd*

This case involved dependency claims arising from a fatal accident which caused the deaths of the first and second deceased persons. The first applicant had brought a dependency claim as the wife of the first deceased, while the second applicant brought a dependency claim as the mother of the first deceased and wife of the second deceased. The first respondent was found to be 100% liable for the accident and the Sessions Court Judge made awards in favour of the first and second applicants. However, the second applicant's claim for loss of support occasioned by the deaths of her husband and her son was disallowed. The respondents appealed to the High Court but only against the award for loss of support given to the first applicant. The second applicant cross appealed against the dismissal of her claim for similar relief. The High Court Judge allowed the respondent's appeal against the first applicant and dismissed the second applicant's cross appeal. The first and second applicants then appealed to the Court of Appeal. The panel, however, found that even though the first applicant was the lawfully wedded wife of the first deceased under Chinese customary marriage, by not registering the marriage under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'), the marriage had become void by operation of law. As for the second applicant's appeal, the said panel declined to intervene in the findings of facts by the Sessions Court Judge when the latter rejected her claim for loss of support. Hence, the applicants made this application *via* encl. 2(a) for this court to review and to order the rehearing of their appeal before another panel pursuant to the inherent powers of this court to prevent injustice. The issues that arose were (i) whether this court was seized with the power to review the decision of the said panel; and (ii) whether the applicants had satisfied the conditions/special circumstances stipulated by the courts when applying for a review of the Court of Appeal's decision.

Held (dismissing applicants' application)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) This court had the jurisdiction to review its earlier decision based on the case of *Ramanathan v PP*. Further, in the Federal Court case of *Harcharan Singh Piara Singh v. Public Prosecutor*, it was declared that where the Court of Appeal is the apex court of any particular case, then it is clothed with such inherent power. Thus, this court had the jurisdiction to hear the applicants' application based on the decided cases. (paras 5-8)

(2) In an application for a review by this court of its own decision, the court must be satisfied that it is a case that falls within the limited grounds and very exceptional circumstances in which a review may be made. This application involved an issue of interpretation of the statutes, in particular the LRA and the Civil Law Act 1956. The interpretation of statutes involved the giving of opinions as to what the relevant provisions of the statutes mean. Thus, on the authority of *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd*, this application had not met the threshold for allowing it. Thus, this court was not satisfied that the conditions for the exercise of this court's review jurisdiction had been met by the applicants. (para 15)

Bahasa Malaysia *Headnotes*

Kes ini melibatkan tuntutan tanggungan yang timbul daripada kemalangan maut yang menyebabkan kematian si mati kedua dan ketiga. Pemohon pertama membuat tuntutan tanggungan sebagai isteri si mati pertama, sementara pemohon kedua membuat tuntutan tanggungan sebagai ibu si mati pertama dan isteri si mati kedua. Responden pertama didapati bertanggungan 100% untuk kemalangan tersebut dan Hakim Mahkamah Sesyen memberikan award memihak pada pemohon pertama dan kedua. Walau bagaimanapun, tuntutan pemohon kedua untuk kehilangan penyara disebabkan kematian suaminya dan anaknya tidak dibenarkan. Responden-responden merayu ke Mahkamah Tinggi tetapi hanya terhadap award tuntutan kehilangan penyara yang telah diberikan kepada pemohon pertama. Pemohon kedua pula merayu balas terhadap penolakan tuntutannya untuk relif yang sama. Mahkamah Tinggi membenarkan rayuan responden terhadap pemohon pertama dan menolak rayuan balas pemohon kedua. Pemohon pertama dan kedua kemudian merayu ke Mahkamah Rayuan. Panel, walau bagaimanapun, mendapati bahawa walaupun pemohon pertama adalah isteri yang sah si mati pertama bawah adat perkahwinan Cina, mereka tidak mendaftarkan perkahwinan mereka di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('LRA') dan oleh itu, perkahwinan itu menjadi tidak sah menurut undang-undang. Untuk rayuan pemohon kedua, panel tersebut enggan campur tangan dalam dapatan yang

dibuat oleh Hakim Mahkamah Sesyen apabila beliau menolak tuntutannya untuk kehilangan penyara. Oleh itu, pemohon-pemohon memohon melalui lampiran 2(a) agar mahkamah ini mengkaji semula dan memerintahkan perbicaraan semula di hadapan panel yang lain menurut kuasa sedia ada mahkamah ini untuk mengelakkan ketidakadilan. Isu-isu yang timbul adalah (i) sama ada mahkamah ini diberi kuasa membuat semakan semula keputusan panel tersebut; dan (ii) sama ada pemohon-pemohon memenuhi syarat-syarat/hal-hal keadaan khas yang ditetapkan oleh mahkamah apabila memohon semakan semula keputusan Mahkamah Rayuan.

Diputuskan (menolak permohonan pemohon-pemohon)
Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah ini mempunyai bidang kuasa membuat semakan semula keputusan yang terdahulu berdasarkan kes *Ramanathan v. PP*. Selanjutnya, Mahkamah Persekutuan dalam kes *Harcharan Singh Piara Singh v. Public Prosecutor* telah mengisytiharkan bahawa di mana Mahkamah Rayuan adalah puncak mahkamah mana-mana kes tertentu, maka ia mempunyai kuasa sedia ada sedemikian. Oleh itu, mahkamah ini mempunyai bidang kuasa mendengar permohonan pemohon-pemohon berdasarkan kes-kes tersebut.

(2) Dalam permohonan semakan semula oleh mahkamah ini atas keputusannya sendiri, mahkamah harus berpuas hati bahawa ia adalah kes yang terangkum dalam alasan-alasan terhad dan keadaan yang amat luar biasa di mana semakan semula boleh dibuat. Permohonan ini melibatkan isu tafsiran undang-undang, khususnya LRA dan Akta Undang-Undang Sivil 1956. Tafsiran statut melibatkan pemberian pendapat tentang apa maksud peruntukan-peruntukan yang relevan. Oleh itu, berdasarkan autoriti *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd*, permohonan ini tidak memenuhi kehendak yang diperlukan untuk membenarkannya. Dengan itu, mahkamah ini tidak berpuas hati bahawa syarat-syarat bagi pelaksanaan bidang kuasa semakan semula mahkamah ini telah dipenuhi oleh pemohon-pemohon.

Case(s) referred to:
Abdul Ghaffar Md Amin v. Ibrahim Yusoff & Anor [2008] 5 CLJ 1 FC ***(refd)***
Adorna Properties Sdn Bhd v. Kobchai Sosothikul [2005] 1 CLJ 565 FC ***(refd)***
Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(foll)***
Chai Siew Yin v. Leong Wee Shing (Civil Appeal No. 02-10-2003(W))(Unreported) ***(refd)***
Chan Yock Cher v. Chan Teong Peng [2005] 4 CLJ 29 FC ***(refd)***
Cheng Bee Teik & Ors v. Peter Selvaraj & Anor [2005] 2 CLJ 839 CA ***(refd)***
Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal [2013] 4 CLJ 901 FC ***(refd)***

Harcharan Singh Piara Singh v. PP [2011] 6 CLJ 625 FC ***(refd)***
Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor And Another Appeal [2004] 1 CLJ 797 CA ***(refd)***
Joremi Kimin & Anor v. Tan Sai Hong [2001] 1 CLJ 526 CA ***(refd)***
Ramanathan Chelliah v. PP [2009] 6 CLJ 55 CA ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 7(2)
Federal Constitution, art. 121(1B)
Law Reform (Marriage and Divorce) Act 1976, s. 34
Rules of the Federal Court 1995, r. 137

For the applicants - Harpal Singh Grewal, Harjeet Singh Sidhu & Reny Rao; M/s PS Sohanpal & Sidhu
For the respondents - Reuben Netto, JS Naicker & Logananth Gunasagaram; M/s Naicker & Assocs

[Editor's note: Appeal from High Court, Shah Alam; Civil Appeal No: 12B-330-08-2013 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Umi Kalthum Abdul Majid JCA:

[1] In encl. 2(a)m the applicants applied to this court to exercise its inherent powers and to give the following orders as prayed:

(i) Bahawa Pemohon-Pemohon/Perayu/Plaintif Ketiga dan Keempat diberi kebenaran untuk memfailkan permohonan ini;

(ii) Bahawa Keputusan Mahkamah Yang Mulia ini yang menolak rayuan Pemohon-Pemohon diketepikan;

(iii) Bahawa keputusan Mahkamah Yang Mulia ini bahawa Pemohon Pertama/Perayu Ketiga tidak mempunyai hak atau 'locus' sebagai isteri undang-undang lazim/isteri berkahwin istiadat untuk membawa tindakan kehilangan tanggungan diketepikan;

(iv) Bahawa keputusan Mahkamah Yang Mulia ini yang memutuskan bahawa definasi 'isteri' di bawah Undang-Undang Sivil 1956 harus dibaca untuk bermaksud seorang isteri yang berkahwin secara sah di bawah Undang-Undang Law Reform (Marriage & Divorce) Act 1976 diketepikan;

(v) Bahawa keputusan Mahkamah Yang Mulia ini bahawa seorang wanita yang telah menjalani perkahwinan ikut istiadat perkahwinan Cina dilarang/dihalang untuk membawa tindakan di bawah Undang-Undang Sivil 1956 diketepikan;

(vi) Bahawa Rayuan Pemohon Kedua/Perayu Keempat yang ditolak secara summary didengar semula oleh panel yang lain di Mahkamah Yang Mulia ini;

(vii) Selanjutnya atau mana-mana relief yang Mahkamah Yang Mulia ini fikir suai manfaat dan teratur; dan

(viii) Mana-mana perintah susulan yang di atas relief atau mana-mana relief daripadanya dibenarkan oleh Mahkamah Yang Mulia ini.

[2] In the applicants' application before us, the applicants applied for this court to review and to order the rehearing of their appeal before another panel pursuant to the inherent powers of this court to prevent injustice ("applicants' application"). The applicants' application was for this court to review the decision of Rayuan Sivil No. B-4-249-09-2014 ("said appeal") where the panel had dismissed the applicants' appeal on 26 October 2015 ("said panel").

[3] The respondents had opposed the applicants' application on two grounds:

(a) that this court is not seized with power to review its decision ("jurisdictional issue"); alternatively

(b) that there are no merits in the application as the said panel was presented with detailed written submissions and heard extensive arguments from counsel representing the applicants, respondents and the *amicus curiae*.

[4] As the jurisdictional issue was fundamental to our powers to hear the applicants' application, we proceeded to hear the parties on this issue first.

Court's Jurisdiction

[5] It was the applicants' submission that this court has the jurisdiction to review its earlier decision based on this court's decision in *Ramanathan Chelliah v. PP* [2009] 6 CLJ 55, where Gopal Sri Ram (JCA) (as he was then) delivering the judgment of this court, at p. 59, held as follows:

> [2] We will take the question of jurisdiction first. It is now settled that the Court of Appeal has jurisdiction to review its own decision in a given case. See, *Taylor v. Lawrence* [2002] EWCA Civ 90, where it was held as follows:
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> > The Court of Appeal had a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice in exceptional circumstances. The court had implicit powers to do that which was necessary to achieve the dual objectives of an appellate court, namely to correct wrong decisions so as to ensure justice between the litigants involved, and to ensure public confidence in the administration of justice, not only by remedying wrong decisions, but also by clarifying and developing the law and setting precedents. A court had to have such powers in order to enforce its rules of practice, suppress any abuses of its process and defeat any attempted thwarting of its

A processes. The residual jurisdiction to reopen appeals was linked to a discretion which enables the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised.

See also, *Chu Tak Fai v. Public Prosecutor* [2006] 4 CLJ 931.

B [3] We are of the view that it is important to recognise that this Court has a residual jurisdiction to reopen an appeal which it had already determined particularly in cases where there is no further recourse to a party. In a case as a present, since the accused was tried in a subordinate court, this court is the court of last resort. The jurisdiction to reopen and review is therefore important in a case as the present to ensure that a C manifest injustice does not go by uncorrected.

[6] Further, in the Federal Court case of *Harcharan Singh Piara Singh v. PP* [2011] 6 CLJ 625, it was submitted that the Federal Court had declared that where the Court of Appeal is the apex court of any particular case, then it D is clothed with such inherent power. The Federal Court, speaking through Richard Malanjum CJ (Sabah and Sarawak), at p. 633, stated as follows:

[17] Accordingly, where the Court of Appeal is the apex court of any particular case in view of s. 87 of the Courts of Judicature Act 1964 ('CJA') then it is also clothed with such inherent power. (See: *Ramanathan Chelliah v. PP* [2009] 6 CLJ 55) ...

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See also the Federal Court's views on its inherent powers in *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors and Another Appeal* [2013] 4 CLJ 901; [2013] 4 MLJ 351.

[7] It was the respondents' submission that this court is not seized with F power to review the decision of the said panel, and hence this application must be dismissed *in limine* for the following reasons:

(a) unlike the Federal Court, the Court of Appeal does not have a review mechanism. Therefore, the decision of this court is final when it comes to accident/running down matters (see *Abdul Ghaffar Md Amin v. Ibrahim* G *Yusoff & Anor* [2008] 5 CLJ 1; [2008] 3 MLJ 771);

(b) the Court of Appeal is a creation of statute, that is, art. 121(1B) of the Federal Constitution;

(c) the Rules of the Court of Appeal 1994 does not contain provision in H respect of a review;

(d) this position is comparable to r. 137 of the Rules of the Federal Court 1995 which permits the Federal Court to review its own decision, but in exceptional circumstances only;

I (e) this applicants' application operates to defeat the principle of finality of litigation; and

(f) such review application would create a floodgate wherein dissatisfied litigants would move a motion for review on decided matters at the Court of Appeal, which it was submitted was not the intention of Parliament.

Decision

[8] Having heard the parties on this issue, we were of the view that we had the jurisdiction to hear the applicants' application. Our view was based on the decided cases referred to by learned counsel for the applicants, especially the case of *Ramanathan v. PP* (*supra*) and the binding authority of the Federal Court case of *Harcharan Singh Piara Singh v. PP (supra)*.

Applicants' Application

Background

[9] The background to the applicants' application could be summarised as follows:

(a) the first applicant was the third plaintiff in the Sessions Court case where she brought a dependency claim as the wife of Low Chin Wee, the first deceased;

(b) the second applicant was the fourth plaintiff and brought the dependency claim as the mother of the first deceased and wife of Low Sai Tiam, the second deceased;

(c) the said appeal before the said panel was a case involving dependency claims arising from a fatal accident which occurred on 11 December 2010 between a motor-jeep driven by the first plaintiff wherein the two deceased were passengers in the said motor-jeep. The said vehicle collided into the respondents' motor-jeep driven by the first respondent/first defendant when the latter vehicle made a sudden 'U' turn. Consequently, the first and second plaintiffs suffered injuries whereas Low Chin Wee and Low Sai Tiam succumbed to their injuries;

(d) the applicants as next-of-kin of the said deceased persons as their respective wives filed dependency claims. The second applicant also brought a claim on behalf of her husband/the second deceased;

(e) the first respondent was found to be 100% liable for the accident and the learned Sessions Court Judge made the following award in favour of the first and second applicants:

first applicant

(i) RM153,600 for loss of support;

(ii) RM10,000 for bereavement;

(iii) RM30,000 for funeral expenses.

second applicant

(i) RM10,000 for bereavement;

(ii) RM30,000 for funeral expenses;

(f) the second applicant's claim for loss of support occasioned by the deaths of her husband (the late Low Sai Tiam) and her son (the late Low Chin Wee) was disallowed;

(g) dissatisfied with the Sessions Court Judge's decision, the respondents appealed to the High Court but only against the award of RM153,600 to the first applicant for loss of support. The second applicant cross-appealed against the dismissal of her claim for similar relief;

(h) the learned High Court Judge allowed the respondents' appeal against the first applicant and dismissed the second applicant's cross-appeal. The first and second applicants then appealed to the Court of Appeal before the said panel in the said appeal. The said appeal did not concern the first and second appellants therein;

(i) the applicants filed an application for leave to appeal to the Court of Appeal, which was duly granted on 7 August 2014;

(j) it was the first applicant's case that she had testified that she had undergone a customary marriage ceremony with the first deceased, Low Chin Wee, on 26 September 2009. The respondents' counsel did not challenge this fact and instead confined his response and challenged that, since her marriage was not registered under the Law Reform (Marriage and Divorce) Act 1976 ("LRA"), she could not bring an action as a wife under s. 7(2) of the Civil Law Act 1956. The evidence of the second applicant (SP5) on the first applicant's marriage was also not challenged. The first applicant had also testified that she had cohabitated with the first deceased for more than ten years prior to her marriage in 2009; and

(k) the said panel dismissed the applicants' appeal. As for the first applicant's appeal, the said panel found that, even though the first applicant is the lawfully wedded wife of the first deceased under Chinese customary marriage, by not registering the marriage under the LRA, the "marriage" had become void by operation of law. As for the second applicant's appeal, the said panel declined to intervene in the findings of facts by the learned Sessions Court Judge when the latter rejected her claim for loss of support. Hence the applicants made this application before us.

[10] In as much as learned counsel for the applicants wanted us to hear his full submission on the matter, which would actually entail us "rehearing" the appeal, we directed him to address us on the threshold issue of whether or

not the applicants had satisfied the conditions/special circumstances stipulated by the court when applying for a review of the Court of Appeal's decision, in particular in the Federal Court case of *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1 ("*Asean Security Paper Mills* case"). In that case, Zaki Tun Azmi PCA (as he then was) laid down some of the circumstances or exceptions, that is, paras [a] to [j], in which the discretion to order for a review should be exercised and they are as follows (see p. 15, paras. 39, 40 and 41):

> [39] There is no doubt that this court has that authority to allow this application. Whether it does so, depends on the circumstances of each case. This court has on many previous occasions decided that it has the right to order a review of its own decision to prevent injustice or an abuse of the process of the court. It has that very wide discretion. However, that wide discretion will not be used liberally but only sparingly, in exceptional cases and on a case to case basis where a significant injustice had probably occurred and there was no alternative effective remedy. The court must exercise strong control over such application. It must be satisfied that it is within exceptional category. Rule 137 cannot be construed as conferring unlimited power to review its earlier decision for whatever purpose. The court must not be too eager to invoke the rule.
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> [40] Some of the circumstances in which this discretion should be exercised or not, are as follows:
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> (a) That there was a lack of quorum eg, the court was not duly constituted as two of the three presiding judges had retired. (*Chia Yan Tek & Anor v. Ng Swee Kiat & Anor* [2001] 4 CLJ 61).
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> (b) The applicant had been denied the right to have his appeal heard on merits by the appellate court. (*Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645).
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> (c) Where the decision had been obtained by fraud or suppression of material evidence. (*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577)
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> (d) Where the court making the decision was not properly constituted, was illegal or was lacking jurisdiction, but the lack of jurisdiction is not confined to the standing of the quorum that rendered the impugned decision. (*Allied Capital Sdn Bhd v. Mohd Latiff Shah Mohd and Another Application* [2004] 4 CLJ 350)
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> (e) Clear infringement of the law. (*Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565)
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> (f) It does not apply where the findings of this court are questioned, whether in law or on the facts (since these are matters of opinion which this court may disagree with its earlier panel). (*Chan Yock Cher @ Chan Yock Kher v. Chan Teong Peng* [2005] 4 CLJ 29)
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> (g) Where an applicant under r. 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard. (*Raja Prithwi Chand v. Sukhraj Rai* [AIR] 1941)

(h) Where bias had been established. (*Taylor & Anor v. Lawrence & Anor* [2002] 2 All ER 353)

(i) Where it is demonstrated that the integrity of its earlier decision had been critically undermined eg, where the process had been corrupted and a wrong result might have been arrived at. (*Re Uddin* [2005] 3 All ER 550)

(j) Where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and Court of Appeal. (*Joceline Tan Poh Choo & Ors v. V Muthusamy* [2007] 6 MLJ 485)

[41] These are but just instances where the court has exercised its discretion to invoke r. 137. There may be many other instances where r. 137 may apply as can be seen from Civil Procedure books where High Courts exercise their inherent jurisdiction to prevent injustice or abuse of the process of the court. By the very meaning of "inherent", as discussed earlier, it is not wise to even attempt to list out the other instances where this court should exercise such discretion. It is best to leave the question open and decide the applications as they come before this court. Inherent jurisdiction is not something conferred by the statute but which it has by its very nature of being a court to enable it to do justice and prevent injustice.

[11] Learned counsel for the applicants submitted that he was raising the exception in para [e], that is, "clear infringement of the law", as the applicants' ground for making the applicants' application. This was because in the said appeal, the said panel was of the view that it was bound by the oral decision of the Federal Court in *Chai Siew Yin v. Leong Wee Shing* in Civil Appeal No. 02-10-2003(W) reversing the High Court's and the Court of Appeal's decisions. The oral decision of the Federal Court is as follows:

This is our oral decision. Full grounds will be given later.

Having heard the detailed arguments and having considered the relevant provisions of the Law Reform (Marriage and Divorce) Act 1976 and in the circumstances of this case, we are unanimous in our decision that this appeal be allowed.

We are not in agreement with the reasoning of the judgments both in the High Court and the Court of Appeal.

Section 34 of the said Act should not be read in isolation, but in harmony with the other provisions of the Act which encapsulate the overall intention of the Legislature in enacting the Act. To do otherwise would defeat the purpose and intention of the Act which was enacted to 'provide for monogamous marriages and the solemnization and registration of such marriages'.

Deposit to be refunded to the Appellant.

[12] It was submitted for the applicants that the Federal Court did not seem to have considered the Civil Law Act and no reference appeared to have been made to earlier decisions of the courts. The Federal Court failed to consider other statutes where the issue of "wife" was decided by the courts. That in cases such as *Cheng Bee Teik & Ors v. Peter Selvaraj & Anor* [2005] 2 CLJ 839; [2005] 4 MLJ 301 and *Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor And Another Appeal* [2004] 1 CLJ 797; [2004] 1 MLJ 525 this court had declared that since the Court of Appeal stands at the apex of personal injury and fatal accident claim, it is free to depart from the decision of the Supreme Court in such matters if it holds that the Supreme Court had come to a wrong decision. The Federal Court re-affirmed the position that the Court of Appeal is now the apex court in respect of fatal accidents and personal injury claims arising from motor vehicle accidents in *Abdul Ghaffar Md Amin v. Ibrahim Yusoff & Anor* [2008] 5 CLJ 1. Therefore on the said authorities, the said panel was clearly wrong when it held that the Federal Court's oral decision in *Chai Siew Yin* binds the Court of Appeal by relying on the doctrine of *stare decisis*.

[13] For the respondents, it was submitted that the applicants' complaint (that the first applicant despite failing to register her marriage with Low Chin Wee ought to be deemed the wife for the purposes of a claim for loss of support; the second applicant being the mother of the Low Chin Wee ought to be entitled to claim for loss of support) that there was a miscarriage of justice by the said panel's decision did not meet any of the stringent conditions as set out in *Asean Security Paper Mills's* case (*supra*) in particular, "clear infringement of the law". That the applicants' contention that the said panel fell into error of law when seeking to interpret/reconcile s. 7 of the Civil Law Act 1956 and the LRA was their discontent over the interpretation of the law referred to and was not subject to review unless the said panel had relied on repealed law to arrive at its decision, which was not the case here.

[14] Further, it was submitted for the respondents that the said panel was eventually tasked to resolve the conflict arising from the Court of Appeal decision of *Joremi Kimin & Anor v. Tan Sai Hong* [2001] 1 CLJ 526 and the Federal Court case of *Chai Siew Yin v. Leong Wee Shing* in Civil Appeal No. 02-10-2003 (W). Both cases involved claims brought by a wife/spouse of a customary marriage *albeit* unregistered and the interpretation and applicability of s. 34 of the LRA in such claims. It was submitted that there was no miscarriage of justice as all parties were allowed to ventilate their case before the said panel. The said panel had ruled that the non-registration of the first applicant's marriage with the first deceased meant that she was not the lawful wife of the deceased to entitle her to seek loss of support under s. 7 of the Civil Law Act 1956. The said panel felt it was bound by the principle of *stare decisis vis* the case of *Chia Siew Yin v. Leong Wee Shing*. Therefore, the respondents submitted the applicants' application should be dismissed with costs.

Decision

[15] We had read the submissions of parties and heard them. We unanimously dismissed the applicants' application in encl. 2a with costs of RM2,000 subject to payment of allocatur fees. We were not satisfied that the conditions for the exercise of this court's review jurisdiction had been met by the applicants. We found that this application involved an issue of interpretation of the statutes, in particular the LRA and the Civil Law Act 1956. The interpretation of statutes inevitably involves the giving of opinions as to what the relevant provisions of the statutes mean. Thus, on the authority of *Asean Security Paper Mills* case, we found that this application had not met the threshold for allowing it. We quote Abdul Hamid Mohamad CJ (as he then was) in that case, at p. 6, as follows:

> **[4] In an application for a review by this court of its own decision, the court must be satisfied that it is a case that falls within the limited grounds and very exceptional circumstance in which a review may be made**. Only if it does, that the court reviews its own earlier judgment. *Under no circumstances should the court position itself as if it were hearing an appeal and decide the case as such. In other words, it is not for the court to consider whether this court had or had not made a correct decision on the facts. That is a matter of opinion. Even on the issue of law, it is not for this court to determine whether this court had earlier, in the same case, interpreted or applied the law correctly or not. That too is a matter of opinion. An occasion that I can think of where this court may review its own judgment in the same case on question of law is where the court had applied a statutory provision that has been repealed. I do not think that review power should be exercised even where the earlier panel had followed certain judgments and not the others or had overlooked the others. Not even where the earlier panel had disagreed with the court's earlier judgments. If a party is dissatisfied with a judgment of this court that does not follow the court's own earlier judgments, the matter may be taken up in another appeal in a similar case. That is what is usually called "revisiting". Certainly, it should not be taken up in the same case by way of a review. That had been the practice of this court all these years and it should remain so. Otherwise, there will be no end to litigation*. A review may lead to another review and a further review. This court has so many times warned against such attempts ...
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> (emphasis added)

Then at p. 7, as follows:

> [6] However, I accept that, in very limited and exceptional cases, this court does have the inherent jurisdiction to review its own decision. I must stress again that this jurisdiction is very limited in its scope and must not be abused. I have no difficulty in accepting that inherent jurisdiction may be exercised in the following instances:
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> ...
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> [9] Thirdly, *where there is a clear infringement of statutory law. In this respect, a clear example would be where the court has mistakenly applied a repealed law. But, where it is a matter of interpretation or application of the law, it is in my view not*

a suitable case for a review. The judgment of this court is *Adorna Properties Sdn. Bhd. v. Kobchai Sosothikul* [2005] 1 CLJ 565 does throw some light in this respect ...

(emphasis added)

[16] In the same case of *Asean Security Mills*, Zaki Tun Azmi PCA (as he then was), other than laying down some of the circumstances where review would be allowed as quoted above, had approved the statement made by Abdul Hamid Mohamad in the case of *Chan Yock Cher v. Chan Teong Peng* [2005] 4 CLJ 29, at p. 21 as follows:

[53] I am therefore not satisfied that there is any probability of the Federal Court's judgment being wrong and that injustice has or will occur to the applicant/respondent. As was said by my learned Chief Justice, Abdul Hamid Mohamad when he was a Federal Court Judge in *Chan Yock Cher v. Chan Teong Peng* [2005] 4 CLJ 29 at p. 45 para h:

> **It has been seen that the applicant questions the findings of this court both in law and on facts. These are matters of opinion. Just because we may disagree** (we do not say whether we agree or disagree with such findings) **with the earlier panel of this court, that is not a ground that warrants us to review the decision**.

[54] I would apply the same reasoning to the present case.

(emphasis added)

[17] Along similar lines, in the Federal Court case of *Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565, in respect of a similar review application under r. 137 of the Rules of the Federal Court 1995, PS Gill FCJ (as he then was) held at pp. 571, 572, as follows:

... Firstly, although the consequence and effect of the main judgment may be harsh when viewed without the benefit of the relevant statutory provision, we do not think this is a case where 'grave injustice had occasioned' due to clear infringement of any principle of law thereby making it permissible for successive application to be made under the said rule. Without going into the merits of this application we find that the substance of the main judgment revolves in the interpretation of s. 340 subsection (3) including the proviso thereof the National Land Code. That provision reads:

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-s (2):

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

A

> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

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And having read the reasoning therein and bearing in mind the words used in the said subsection including the proviso we are not convinced that the interpretation given in the main judgment is patently wrong thereby resulting in grave injustice thus warranting successive application under r. 137. And even if we are wrong our view it should be left to another occasion to further debate on the issue. For now we are of the opinion that despite the concession made by learned counsel for the respondent on the issue of successive application this is not a proper case for us to proceed to hear the merits or to grant the order as sought for.

Secondly, there is much force to be given to the contention that there should be finality to any litigation. The main judgment was handed down by this Court which is the apex court of this country. If the application of r. 137 is made liberally the likely consequence would be chaos to our system of judicial hierarchy. There would then be nothing to prevent any aggrieved litigant from challenging any decision of this court on the ground of 'injustice' *vide* r. 137. And if he succeeds in his application there is also nothing to bar the other party from making his own application to overturn such success. In short, there will be no end to the matter. We do not think that was the intention of the legislature when promulgating the said rule ...

(emphasis added)